

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 02/16/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA,	:	
	:	
-against-	:	22-CR-582 (VEC)
	:	
NELSON OLIVO,	:	<u>ORDER</u>
	:	
Defendant.	:	
	:	
-----	X	

VALERIE CAPRONI, United States District Judge:

WHEREAS on multiple occasions, the parties have represented that Mr. Olivo conspired with his co-defendants to distribute or possess with intent to distribute marijuana;

WHEREAS the Superseding Indictment (S1) does not allege that Mr. Olivo conspired to distribute or possess with intent to distribute marijuana; and

WHEREAS the Second Circuit has held that the inclusion of a controlled substance not specifically alleged in the indictment may be permissible if (1) proof of the alleged conduct and proof of a conspiracy to distribute controlled substances not alleged in the indictment are based on the same sets of operative facts and (2) the addition or substitution of controlled substances not alleged in the indictment does not affect sentence, including the applicable mandatory minimums, *see, e.g., United States v. Knuckles*, 581 F.2d 305, 311–12 (2d Cir. 1978); *United States v. Wozniak*, 126 F.3d 105, 111 (2d Cir. 1997); *United States v. D’Amelio*, 683 F.3d 412, 420 n.6 (2d Cir. 2012).

IT IS HEREBY ORDERED that not later than **5:00 P.M. on Monday, February 19, 2024**, the parties must file letters as to whether (1) the Court should charge the jury that it may convict Mr. Olivo of the charged conspiracy if it finds that he conspired to distribute or possess

with intent to distribute marijuana and (2) if so, whether the verdict form should include special findings as to the quantity of marijuana.

SO ORDERED.

Date: February 16, 2024
New York, NY



VALERIE CAPRONI
United States District Judge